

Bison Comments 3/15/06

Regarding:

DEQ Version 3 – 2/21/06

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NEW RULE I DEFINITIONS

(1) For purposes of this rule, the following definitions apply: [40 CFR 301]

(a) “Best available retrofit technology, or BART” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the following:

- (i) the technology available;
- (ii) the costs of compliance;
- (iii) the energy and non-air quality environmental impacts of compliance;
- (iv) any pollution control equipment in use or in existence at the source;
- (v) the remaining useful life of the source; and
- (vi) the degree of objectively measured improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(b) “BART-eligible source” means an existing stationary facility which emits visibility-impairing pollutants in amounts the department reasonably anticipates will cause or contribute to any visibility impairment in any mandatory class I federal area.

(c) "Building, structure, or facility" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities must be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0 respectively). [Necessary for definition of “existing stationary facility”]

(d) “Deciview” means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following

equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements):

Deciview haze index = $10 \ln (\text{bext}/10 \text{ Mm}^{-1})$.

Where bext = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}).

(e) [Used in the definition of “BART-eligible source” at 40 CFR 301.]

“Existing stationary facility” means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

- (i) fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (ii) coal cleaning plants (thermal dryers);
- (iii) kraft pulp mills;
- (iv) Portland cement plants;
- (v) primary zinc smelters;
- (vi) iron and steel mill plants;
- (vii) primary aluminum ore reduction plants;
- (viii) primary copper smelters;
- (ix) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (x) hydrofluoric, sulfuric, and nitric acid plants;
- (xi) petroleum refineries;
- (xii) lime plants;
- (xiii) phosphate rock processing plants;
- (xiv) coke oven batteries;
- (xv) sulfur recovery plants;
- (xvi) carbon black plants (furnace process);
- (xvii) primary lead smelters;
- (xviii) fuel conversion plants;
- (xix) sintering plants;
- (xx) secondary metal production facilities;
- (xxi) chemical process plants;
- (xxii) fossil-fuel boilers of more than 250 million British thermal units per hour heat input;
- (xxiii) petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels;
- (xxiv) taconite ore processing facilities;
- (xxv) glass fiber processing plants; and
- (xxvi) charcoal production facilities.

(f) "Mandatory class I federal area" means any area identified ~~in~~ below: ~~40 CFR 81.417~~.

- (i) Anaconda-Pintlar Wilderness
- (ii) Bob Marshall Wilderness
- (iii) Bridger Wilderness (Wyoming)
- (iv) Cabinet Mountains Wilderness
- (v) Fitzpatrick Wilderness (Wyoming)
- (vi) Gates of the Mountains Wilderness
- (vii) Glacier National Park
- (viii) Grand Teton National Park (Wyoming)
- (ix) Hells Canyon Wilderness (Idaho)
- (x) Lostwood Wilderness (North Dakota)
- (xi) Medicine Lake Wilderness
- (xii) Mission Mountain Wilderness
- (xiii) North Absaroka Wilderness (Wyoming)
- (xiv) Red Rock Lakes Wilderness
- (xv) Sawtooth Wilderness (Idaho)
- (xvi) Scapegoat Wilderness
- (xvii) Selway-Bitterroot Wilderness
- (xviii) Teton Wilderness (Wyoming)
- (xix) Theodore Roosevelt National Park (North Dakota)
- (xx) U.L. Bend Wilderness
- (xxi) Washakie Wilderness (Wyoming)
- (xxii) Yellowstone National Park

Comment.

As noted in earlier comments, we suggest that instead of referring to these areas in a federal citation, it seems more instructive to name the areas specifically. The areas are identified via the 1977 Clean Air Act Amendments and have not been added to or modified since. As a result, it is highly unlikely that the areas will change and thus naming them provides more clarity. In addition, by listing each area, the reader will not confuse other wilderness areas (Great Bear, e.g.) or Class I areas (Northern Cheyenne, Fort Peck, etc.) as being applicable or associated with either the BART provisions [40 CFR 51.308(e)] or the protection of visibility as a whole defined by 40 CFR 51.300(a).

Finally, mandatory federal Class I areas that are located outside of Montana are also included (per 40 CFR 51, Subpart P requirement) in the list above. To keep the list manageable, only those areas that could be within

250 kilometers of a potential BART-eligible source were included. The 250 kilometer figure was chosen since this is the outer range of dispersion modeling distance provided for in Appendix Y (incorporated by reference in NEW RULE II) of the BART program.

(g) "Fixed capital costs" means the capital needed to provide all of the depreciable components.

(h) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(i) "In existence" means that the owner or operator has obtained all necessary preconstruction approvals or permits required by federal, state, or local air pollution emissions and air quality laws or regulations and either has:

- (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility; or
- (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed in a reasonable time.

[Necessary for definition of "existing stationary facility"]

(j) "In operation" means engaged in activity related to the primary design function of the source. [Necessary for definition of "existing stationary facility"]

(k) "Installation" means an identifiable piece of process equipment.

(l) "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

(m) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(n) "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new component exceeds 50 percent of the fixed capital cost of a comparable entirely

new source. Any final decision as to whether reconstruction has occurred shall be made in accordance with 40 CFR §60.15. [Necessary for definition of “existing stationary facility”]

(o) “Secondary emissions” means emissions which occur as a result of the construction or operation of an existing stationary facility but do not come from the existing stationary facility. Secondary emission may include, but are not limited to, emission from ships or trains coming to or from the existing stationary facility.

[Necessary for definition of “potential to emit.”]

(p) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant [17.8.901 adds “subject to regulation under the FCAA.”]

[Necessary for definition of “existing stationary facility.”]

(q) "Visibility impairment" means any humanly perceptible change in visibility light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.

NEW RULE II INCORPORATION BY REFERENCE

For the purposes of this subchapter, the board hereby adopts and incorporates by reference 40 CFR Part 51, Section IV of Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule.

NEW RULE III BART REQUIREMENTS

(1) The owner or operator of an existing stationary facility is not subject to the requirements of NEW RULE III for sulfur dioxide (SO₂) or oxides of nitrogen (NO_x) if the BART-eligible source has the potential to emit less than 40 tons per year of such pollutant(s), or for PM-10 if the BART-eligible source emits less than 15 tons per year of PM-10 based on a continuous 12 month period of operation that accurately reflects steady-state operation, excluding periods of start-up, shutdown, and malfunction.

[40 CFR 308(e)(1)(ii)(C)]

Comment.

The 12-month period suggested here seems reasonable. The only question is whether there may be a tendency for EPA to object to this period since the term "actual" used in permitting usually refers to a 2-year period. On the other hand, the entire BART program is limited only to a handful of sources in Montana. It is highly likely that either a 12-month period or a 2-year period would not make a substantive difference in either emitting unit applicability or a final selected BART technology.

Excluding periods of start up, shutdown, and malfunction seems reasonable. Attempting to quantify non-steady-state operations appears to be counterproductive to establishing an acceptable BART technology. The manner in which BART selection is presented in Appendix Y of the rules clearly contemplates the selection of a control that reflects the use of ongoing controls, not the implementation of startups, etc.

(2) The owner or operator of a BART-eligible source which has the potential to emit NO_x, SO₂, or which emits PM-10 in amounts that equal or exceed those set forth in **NEW RULES III** (1) shall, as requested in writing by the department, submit available to the department information, within 30 days of each request for data following the effective date of this rule, necessary to conduct air quality modeling pursuant to 40 CFR Part 51, Appendix Y, relevant to the impact of the BART-eligible source's emissions on visibility in any mandatory class I federal area. **If the information submitted is incomplete or otherwise inadequate, the department shall notify the owner or operator, list the**

~~reasons why the information is incomplete or inadequate, and state the additional information required. The owner or operator shall submit to the department the required information 30 days after receiving such notice.~~

[40 CFR 308(e) & Guidelines at Sec. II.A.]

Comment.

DEQ has provided an improvement over the previous version in this section. Nonetheless, it appears that additional streamlining and clarity is possible. The wording continues to be overly broad about exactly what information DEQ would consider 'complete and adequate' [other than an absurdly large submittal such as met data (Note: met files are approximately 27 gigabytes each), terrain files, etc.] Would it not be clearer and more succinct if DEQ simply sends each facility a list of information it needs and then the facility could respond to the specifics of the request? This seems reasonable since DEQ has already requested all, or nearly all, of the information it needs to conduct and complete dispersion modeling within the meaning of Appendix Y.

In addition, the above proposed language (by Bison) is written such that the facility does not need to make judgments about what information is or is not required. The facility is obligated, however, to respond to data requests from the department provided the request is related to the subject matter at hand (40 CFR 51, Appendix Y). This allows the department to make specific requests and does not put the facility into "guessing" about specific data needs.

(3) An owner or operator of a BART-eligible source shall certify in writing that, based on information and belief formed after reasonable inquiry, the statements and information submitted pursuant to New Rule III(2) are true, accurate, and complete.

(4) A BART-eligible source which is not otherwise exempt pursuant to NEW RULE III (1) and which the department finds causes or contributes to an increase in visibility impairment in an affected mandatory class I federal area measuring 0.5 deciview or more when compared against natural conditions is subject to the requirements of NEW RULE III. The department shall notify each owner or operator of a BART-eligible source that it finds causes or contributes to visibility impairment of this finding. The department shall include in the notification the basis and supporting documentation of the basis for such a finding.

[70 FR 39117-39118 & Guidelines Sec. III.A.]

(5) Within 120 days following the ~~the~~ postmarked date of the department's notification pursuant to NEW RULE III(4), the owner or operator of the BART-eligible source shall submit to the department a proposal for BART made pursuant to Section IV of 40 CFR Part 51, Appendix Y for those pollutants that cause or contribute to visibility impairment as set forth in NEW RULE III(4).

[40 CFR 51.308(e)(1)(ii)& Guidelines Sec. IV.]

(6) Within 120 days following receipt of a proposal for BART, the department shall issue a preliminary notice of BART determination.

(7) After issuing the preliminary notice of BART, the department shall notify the owner or operator of the BART-eligible source and interested parties, publish public notice in a newspaper of general circulation in the area(s) affected by the source for which the preliminary notice of BART is issued, and provide at least 30 days of public comment on the preliminary notice of BART determination.

(8) The department may, on its own action, or at the request of the owner or operator of a BART-eligible source or an interested party, extend by 15 days the period within which public comments may be submitted if the department finds that an extension is necessary to allow the department to make an informed decision.

Comment.

Prior comments had requested that there be some allowance for a back-and-forth discuss with DEQ regarding the applicant-proposed BART and DEQ's preliminary determination of BART. I continue to believe that this is a reasonable approach. The specific language originally proposed is repeated below for completeness.

If, however, DEQ is compelled to issue a PD within 120 days of receipt of the applicant-proposed BART(without explicit provisions for extension), then time is needed to allow discussions regarding the proposed PD once issued. Substantive financial and time commitments will be necessary from BART-eligible sources that should not be made under an arbitrary timeline. In the scheme of things, an additional 30 to 90 days for discussions and resolution is not critical to the process. The issues being discussed are for " . . . enjoyment of the visitor's visual experience of the mandatory

Class I Federal area" (§300). Impacts to human health are not an issue or goal of the BART program. Therefore, hast is not relevant.

That said, if DEQ's proposal is meant to allow for such a discussion [i.e. opportunities for extensions in NEW RULE III (8)] then the proposal may be sufficient. Otherwise, the previous suggestion applies:

Suggested from DEQ Web Site Labeled as "February 21, 2006 – Bison Engineering Comments on Proposed BART Rule."

"Pursuant to the proposal submittal in accordance with New Rule III(5), the department may seek additional information or clarification relating to the BART proposal. Following a written request, the BART-eligible source must provide a response to the department inquiry within 30 days of receipt. The department may grant additional time for a response if so requested by the source and the department finds that an extension is warranted."

(9) Any request for an extension, as provided under NEW RULE III(5), by the owner or operator of a BART-eligible source or an interested party must be submitted to the department by the date that written comments on the preliminary notice of BART determination originally were due.

(10) Within 10 days following the close of the public comment period, the department shall issue a final notice of BART determination and notify the owner or operator of the BART-eligible source and interested parties of such notice. [42 USC 7491(b)(2)(A)]

(11) A person who is jointly or severally adversely affected by the department's notice of BART determination may request a hearing before the department. The request for hearing must be filed within 15 days following the department's final issuance of the notice of BART determination and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing held under this rule.
[MAPA]

(12) The department's action is not final unless 15 days have elapsed from the date of the department's issuance of the final notice of BART determination. The filing of a request for

a hearing does not stay the effective date of the department's notice of final BART determination. The Department may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing that:

- (a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or
- (b) continuation of the final notice of BART determination during the appeal would produce great or irreparable injury to the person requesting the stay.

(13) Upon granting a stay, the Department may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the owner or operator of a BART-eligible source subject to NEW RULE III and its employees if the Department determines that the final notice of BART determination was properly issued. When requiring an undertaking, the Department shall use the same procedures and limitations as are provided in 27-19306(2) through (4), MCA, for undertakings on injunctions.

[Due process / administrative remedies – See 75-2-211(11), MCA].

(14) The owner or operator of a BART-eligible source shall install and begin operating control equipment as set forth in the department's notice of BART determination as expeditiously as practicable, but in no event later than five years after the date of EPA approval of the BART determination as a revision to the Montana State Implementation Plan.

[42 USC 7491(b)(2)(A)]